HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No.9608 OF 2006

Date: 02-05-2006

Between:

Sri Bhagyalaxmi Industries

PAR – Boiled Driers,

Rep. by its Managing Partner and Manager

E. Nageshwar Rao, S/o. Bikshapathy,

Kesamudram – 506 112, Warangal District.

.. Petitioner

AND

The Collector & District Magistrate,

Warangal District, Warangal & two others

.. Respondents

ORDER:

What is assailed is an order dated 10-04-2006 of the 1st respondent exercising power under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') at the instance of Andhra Bank, Warangal and directing the 2nd respondent to take possession of the properties mortgaged to

the Andhra Bank by the petitioner and handover the same to the said Bank.

Petitioner availed a term loan facility and O.C.C. limit from Kesamudram Branch, Andhra Bank, Warangal District in 1999. Admittedly, he defaulted, he says partly, Bank contends substantially. According to the petitioner, he could not repay the installments in accordance with the agreement, on account of a crop failure in the district.

Be that as it may, the bank initiated proceedings under the Act, issued a notice under Section 13(2) of the Act demanding Rs.52,52,000/- intimating the petitioner that on failure to pay the amount, measures under Section 13(4) of the Act would be taken up. There were negotiations between the petitioner and the bank. According to the petitioner,

he deposited an amount of Rs.8.00 lakhs on 20th April, 2006 which was accepted by the bank. The petitioner offered to pay further amounts in May and June, 2006. Despite receipt of the amount of Rs.8.00 lakhs in April, 2006 and despite the petitioner promising to pay further amounts and clear the dues shortly, the bank proceeded to invoke the coercive process under Section 14 of the Act and on such invocation, the 1st respondent has passed the impugned order, is the substance of the complaint in the writ petition.

Inter alia the impugned order of the 1st respondent is assailed on the ground that the order was passed without issuing a notice to the petitioner. The position is clear that the orders to be passed under Section 14 of the Act are on the invocation by a secured creditor of the coercive processes of the State so as to avoid a potential law and order problem, in case the secured creditor exercises powers under

Section 13(4) of the Act itself and the borrower resists.

The Chief Metropolitan Magistrate or the District Magistrate exercising powers under Section 14 of the Act appears to have no jurisdiction, power or authority to determine or adjudicate upon rival claims as to the existence or otherwise of the liability or the quantum of it, under the provisions of the Act. The authority exercising powers under Section 14 of the Act is merely to bring into operation

the powers of the State to enable the taking possession of any secured asset on the invocation of the power under Section 14 of the Act by a secured creditor under the provisions of the Act.

In the context of the provisions of the Act, in particular, the provisions of Section 14, no requirement of issuing a notice to the borrower is either expressly apparent or compellingly implicated. For the aforesaid reasons, the contention of the petitioner that the order is invalid on account of non-issuance of a notice is misconceived.

In extremis, the learned counsel for the petitioner states that the petitioner is willing to pay the entire amount due to the bank (secured creditor) within a short time and would make a representation in that behalf to the bank and also states that the bank should have no objection to this course of action. It is not the province of this Court to consider or speculate on what the respondent bank could decide on the petitioner's offer. This Court is only concerned with the validity of the impugned order of the 1st respondent.

In the analysis above, this Court finds no infirmity in the impugned order. Should the petitioner make a representation to the bank requesting time to pay the entire amount, this Court is in no doubt that the bank may respond positively to the said offer, particularly since the bank is not in the business of selling seized properties but is only interested in recovering its dues. In the circumstances, the respondent is at liberty to make a representation to the bank and such representation shall be considered by the bank appropriately and in the plenitude of its administrative discretion.

The Writ Petition is disposed of as above. In the circumstances, no costs.

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GODA RAGHURAM, J

Date:02-05-2006.

NOTE:

Furnish C.C. of the order as soon as possible.

(**B/O**)

PV